IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

Saheb Ram VERSUS Lekh Ram & others.

(S.B. Civil Writ Petition No.3408/1993)

DATE OF ORDER ::: FEBRUARY 24, 2005

P R E S E N T

HON'BLE MR. JUSTICE PRAKASH TATIA

Mr. S.G. Ojha, for the petitioner.

Mr. L.R. Upadhyay, Dy.GA) for the respondents.
Mr. S. Sharma)

BY THE COURT :

Heard learned counsel for the parties.

The petitioner is aggrieved against the order dated 28.6.1993 by which the Chief Engineer allowed the appeal of the respondent no.1 and set aside the orders passed by the Executive Engineer and Superintending Engineer in the matter of sanction of new outlet.

According to learned counsel for the petitioner, the Executive Engineer as well as Superintending Engineer in their orders dated 13.3.1992 and 4.9.1992

considered all the technical aspects and thereafter rejected the prayer of the respondent no.1 for opening of new outlet. The Chief Engineer, Irrigation, after narraging the arguments of both the parties, without considering any argument of any party, set aside the orders passed by the Executive Engineer as well as Superintending Engineer by observing that after looking into the record, in the opinion of Chief Engineer, the canal can be given a turn from P.No.164/211 and can be connected again with 163/211 and in case, by doing so, if any difficulty comes for irrigation, then the water turn of Lekh Ram may be reduced.

I have considered the submission of learned counsel for the parties and have perused the orders.

It appears from the orders passed by the Executive Engineer as well as Superintending Engineer that both of them considered all the factual aspect and technically found that the request of respondent Lekh Ram cannot be accepted. Even the Chief Engineer, who though has not passed any speaking order, but still it is apparent that he was also not sure as to whether by setting aside the orders of the Executive Engineer as well as Superintending Engineer, there will be difficulty in giving water supply to the cultivators or not ? And, therefore, he observed that in case,

more time is taken for irrigation, then the turn of irrigation of Lekh Ram be reduced.

Since two officers technically found that the prayer of respondent no.1 cannot be accepted and that has been set aside by the chief Engineer without considering any of the grounds of any party and under assumption that in his opinion, it will be appropriate to change the direction of irrigation facility, therefore, the order dated 28.6.1993 deserves to be set aside and, hence, set aside.

It may be relevant to mention here that the said order dated 28.6.1993 was stayed by this Court on 16.7.1993 and that position is continuing at the spot as it was continuing in pursuance of the orders passed by the Executive Engineer as well as Superintending Engineer, therefore also, now it is too late to alter the position.

In view of the above, this writ petition is allowed and the order dated 28.6.1993 passed by the Chief Engineer, Irrigation, Hanumangarh is set aside.

(PRAKASH TATIA), J.

S.Phophaliya